

File

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
C.P.R. CONSTRUCTION, INC.,)
)
Appellant,)
)
v.)
)
BENTON-FRANKLIN-WALLA WALLA)
COUNTIES AIR POLLUTION CONTROL)
AUTHORITY,)
)
Respondent.)

PChB No. 77-77

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of C.P.R. Construction, Inc. for a civil penalty of \$250 for failure to control fugitive dirt and blow-sand at a development site, came on for hearing before the Pollution Control Hearings Board, all members present, convened in Pasco, Washington on November 8, 1977 at 3:30 p.m. W. A. Gissberg, presiding. Respondent elected an informal hearing. Appellant appeared through its Vice President Doug Willcox. Respondent appeared through its attorney Philip M. Rodriguez.

Witnesses were sworn and testified. Exhibits were examined.

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 C.P.R. Construction, Inc. is a general contractor engaged in
6 the development of residential streets and homes in an area known as
7 South Highlands in the City of West Richland.

8 II.

9 The firm has been in business for three years and is familiar
10 with the air pollution control regulations in the area. Although much
11 of the work is performed by sub-contractors, each of the appellant's
12 project managers is responsible for taking dust prevention measures.

13 III.

14 During the spring of each year, windstorms hit the area
15 causing gust of winds to reach 55 miles per hour. The winds are
16 from the southwest and blow in the direction of Kings Heights in
17 West Richland, where the respondent's inspector has received complaints
18 about the dust from persons suffering with allergies.

19 IV.

20 On April 25, 1977 at about 6:00 p.m. the respondent's
21 enforcement officer, James P. Cooke, was on routine patrol and
22 observed large amounts of particulate matter becoming airborne,
23 and blowing across Bombing Range Road. He proceeded to the appellant's
24 development known as the Plat of South Highlands and found it to be
25 the source of the particulate matter. The wind had been blowing
26 all day, with gusts up to fifty miles per hour since 2:00 p.m. The

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1 officer found no visible sign of any attempt by the appellant or any
2 of his employees to control the problem.

3 V.

4 Water mains and hydrants have been installed in the plat with
5 the City of West Richland providing service. Although the
6 availability of water to control the dust by using the hydrant
7 supply was disputed, other means of control were available to
8 appellant, i.e., tanker trucks carrying up to 8,000 gallons of water.

9 VI.

10 The respondent's inspector issued the C.P.R. Construction, Inc.
11 a Notice of Violation and imposed a civil penalty of \$250 alleging
12 a violation of Section 4-040(2), (5) and (7) of respondent's
3 Regulation 75-7 which provides:

14 (2) No person shall cause or permit the
15 emission or dispersion of particulate matter
16 from any source which becomes deposited beyond
17 the premises of the pollution source in
18 sufficient quantity to interfere unreasonably
19 with the use and enjoyment of the property
20 upon which the material was deposited.

21 (5) No person shall cause or permit the
22 emission of any air contaminant or water
23 vapor from any source, including any air
24 contaminant whose emission is not otherwise
25 prohibited by this regulation, if the air
26 contaminant or water vapor causes detriment
27 to the health, safety or welfare of any person,
or causes damage to property or business beyond
the premises of the source.

(7) Reasonable precautions shall be taken
to prevent fugitive particulate material from
becoming airborne:
(a) When handling, transporting or storing
particulate material;
(b) When constructing, altering, repairing
or demolishing a building, its appurtenances,
or a road;

- 1 (c) From a roadway not originally designed
2 for extra traffic load, even though such
3 extra traffic may be only temporary;
4 (d) From an untreated open area. No person shall
5 break the natural surface cover of the ground
6 or the surface layer of a field in the
7 process of land clearing, leveling or grading
8 without reasonable precautions to prevent
9 air pollution.

10 Section 4-130 provides for a civil penalty of up to \$250 per
11 day for each violation of General Regulation 75-7.

12 VII.

13 Any Conclusion of Law hereinafter stated which may be deemed a
14 Finding of Fact is hereby adopted as such.

15 From these Findings the Pollution Control Hearings Board
16 comes to these

17 CONCLUSIONS OF LAW

18 I.

19 This Board has jurisdiction of the subject appeal.

20 II.

21 Appellant violated Section 4-040(7)(d) of respondent's
22 Regulation 75-7. Respondent did not prove a violation of
23 Section 4-040(2) and (5).

24 III.

25 Appellant argues that dust is a natural phenomenon in the area.
26 However, uncontroverted testimony from respondent convinces us that
27 most of the airborne dust originates from lands under development.
The area's soil, although composed of fine material readily capable
of becoming airborne, is normally contained by native ground cover.
It is the disturbance of vegetation, and/or breaking of the "crust"

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1 formed by water on the surface which is the primary cause of fugitive
2 dust and blow-sand.

3 IV.

4 Appellant further protests the authority's negligence in failing
5 to amend its regulations to reflect drought conditions which prevailed
6 at the time of the violation. However, respondent is charged with
7 responsibility for the prevention and control of air pollution, in
8 order to protect human health and safety, through enforcement of
9 standards at least as stringent as those established by the state.
10 (RCW 70.94, Washington Clean Air Act.) Absent action by the
11 legislature or the Department of Ecology, the respondent has no
12 authority to modify its regulations during a water shortage.

3 V.

14 The civil penalty should be affirmed.

15 VI.

16 Any Finding of Fact which should be deemed a Conclusion of
17 Law is hereby adopted as such.

18 Therefore, the Pollution Control Hearings Board issues this

19 ORDER

20 The civil penalty of \$250 is affirmed.

21 DATED this 23^d day of November, 1977.

22 POLLUTION CONTROL HEARINGS BOARD

23 W. A. Gisseberg
24 W. A. GISSEBERG, Chairman

25 Chris Smith
26 CHRIS SMITH, Member

27 Dave J. Mooney
DAVE J. MOONEY, Member

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